

CHAPTER 37 ESTATE TAX

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3700 GENERAL PROVISIONS

- 3700.1 The provisions of this chapter are adopted under authority of §21 of the Inheritance and Estate Tax Revision Act of 1986, as amended, effective February 24, 1987 (D.C. Law 6-168; 22 DCR 7008).
- 3700.2 In accordance with Mayor's Order 87-90, the Deputy Chief Financial Officer of the Office of Tax and Revenue ("Office") is constituted the representative of the Mayor for the supervision and enforcement of the Inheritance and Estate Tax Revision Act of 1986, as the same may be amended from time to time.
- 3700.3 References in this chapter to sections of the "Act" are to sections of the Inheritance and Estate Tax Revision Act of 1986, as amended, effective 24, 1987 (D.C. Law 6-168; 33 DCR 7008).
- 3700.4 This chapter shall apply only to estates of persons dying after March 31, 1987, and subject to the provisions of the Act.
- 3700.5 All estates of persons dying on or before March 31, 1987, shall be governed by the rules contained in Chapter 2 of this title.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §21 of the Inheritance and Estate Tax Revision Act of 1986, as amended, effective February 24, 1987 (D.C. Law 6-168, D.C. Code §47-3701), and Mayor's Order 87-90 dated April 20, 1987).

SOURCE: Final Rulemaking published at 35 DCR 2353 (April 1, 1988).

EDITOR'S NOTE: The Office of the Chief Financial Officer of the District of Columbia published a Notice of Public Interest at 44 DCR 2345 (April 18, 1997) changing the name of the "Department of Finance and Revenue" to the "Office of Tax and Revenue."

3701 FACTORS IN DETERMINING RESIDENCE

3701.1 Factors which may be relevant in determining whether or not a decedent was a resident or nonresident for purposes of the Act include, by way of illustration and not by way of limitation, the following:

- (a) The intent of decedent to establish a domicile as evidenced by writings of decedent, such as a will;
- (b) The location and nature of a permanent dwelling maintained by decedent;
- (c) The purpose of the decedent's presence in the District;
- (d) Commitments and acts indicating domicile, including the following:
 - (1) Voter registration;
 - (2) Vehicle registration;
 - (3) Place of filing income tax returns;
 - (4) Address customarily used;
 - (5) Claiming or filing homestead exemption;
- (e) The situs of a decedent's assets, major business interests or sources of livelihood;
- (f) Participation in fraternal, religious and social organizations; and
- (g) The amount of time spent by the decedent in various locales.

3701.2 When a claim is made that the residence of the decedent was outside the District, the taxpayer shall have the burden of showing nonresidence.

SOURCE: Final Rulemaking published at 35 DCR 2353, 2354 (April 1, 1988).

3702 COMPUTATION OF TAX

3702.1 The amount of the federal credit shall be construed to take full advantage of the maximum state death tax credit allowable under the laws of the United States.

3702.2 In determining the maximum amount of the allowable federal credit, it shall be presumed that the maximum allowable federal credit determined in accordance with §2011(b) of the Internal Revenue Code subject to the limitations of §§2011(e) and (f) was claimed and that all other requirements of §2011 were satisfied. Failure to claim the maximum amount of the federal credit on the federal estate tax return shall not affect the amount of the District estate tax due.

- 3702.3 For resident decedents owning no real or tangible personal property located outside the District, the District estate tax shall equal the federal credit (determined in accordance with the Act and §§3702.1 and 3702.2 of this chapter.

Example: The decedent was domiciled in the District with all of the decedent's property located in the District. The value of the decedent's total gross estate is nine hundred twenty thousand dollars (\$920,000) and the allowable deductions are one hundred seventy thousand dollars (\$170,000). The allowable credit for state death taxes ("federal credit") is twenty thousand and four hundred dollars (\$20,400). Consequently, the District estate tax due is twenty thousand and four hundred dollars (\$20,400).

		<u>Value</u>
Decedent's Property:		
D.C. real property	\$500,000	
Tangible personal property	135,000	
Intangible personal property	<u>285,000</u>	
Total gross estate		\$920,000
Total allowable deductions		170,000
Taxable estate		750,000
Gross federal estate tax		248,300
Allowable unified credit		192,800
Allowable credit for state death taxes ("federal credit")		20,400
District estate tax due		20,400

- 3702.4 For resident decedents owning property located outside the District, the District estate tax shall equal the federal credit (determined in accordance with the Act and §§3702.1 and 3702.2) reduced by the lesser of one of the following:

- (a) The amount of death tax paid to any other state that qualifies for the credit;
or
- (b) An amount computed under the following formula:

$$\begin{array}{rcl}
 & & \text{Value of the gross estate subject} \\
 & & \text{to death tax in the other state} \\
 & & \text{(applying District law)} \\
 \text{Federal credit} & \times & \frac{\text{The value of the decedent's}}{\text{gross estate}}
 \end{array}$$

Example: The decedent resided in the District but owned a summer beach house in Maryland. The value of her gross estate is one million four hundred fifteen thousand dollars (\$1,415,000) and the allowable deductions are four hundred fifteen thousand dollars (\$415,000). The allowable credit for state death taxes ("federal credit") is thirty-three thousand two hundred dollars (\$33,200). The District estate tax will be thirty-three thousand two hundred dollars (\$33,200) reduced by the lesser of the tax actually paid by the estate to Maryland or the amount allowed by statute. In this case, the thirty-three thousand two hundred dollars (\$33,200) is reduced by the statutory amount of eleven thousand six hundred fourteen dollars (\$11,614). The District estate tax is twenty-one thousand five hundred eighty-six dollars (\$21,586).

3702.4 (Continued)

		<u>Value</u>
Decedent's Property:		
D.C. real property	\$600,000	
Tangible personal property	135,000	
Intangible personal property	185,000	
Maryland real property	400,000	
Maryland tangible personal property	<u>95,000</u>	
Total gross estate		\$1,415,000
Total allowable deductions		415,000
Taxable estate		1,000,000
Gross federal estate tax		345,800
Allowable unified credit		192,800
Allowable credit for state death taxes ("federal credit")		33,200
Potential District estate tax		33,200
District estate tax computed by reducing \$33,200 by the lesser of:		

- (1) Eleven thousand six hundred twenty dollars (\$11,600) (the amount of death tax paid to Maryland); or
- (2) Eleven thousand six hundred fourteen dollars (\$11,614) determined as follows:

		Value of the gross estate subject to death taxation in Maryland (applying District law)
Federal credit	X	
		<hr/>
		The value of the decedent's gross estate
		<hr/>
\$33,200	X	<u>\$495,000</u>
		\$1,415,000
District estate tax (\$33,200 - \$11,614)		\$21,586

3702.5 The District estate tax shall be imposed on the estate of a nonresident decedent to the extent that the decedent's property has a taxable situs in the District. The tax is computed under the following formula:

		Value of that part of decedent's gross estate subject to tax by the District
Federal credit	X	
		<hr/>
		The value of the decedent's gross estate

Example: The decedent was domiciled in the State of Maryland and conducted business as a sole proprietor in the District of Columbia. The decedent gross estate totals three million four hundred thirty-five thousand dollars (\$3,435,000) and allowable deductions total seven hundred thirty-five thousand dollars (\$735,000). Under the statute, the District estate tax is one hundred nineteen thousand eight hundred and twelve dollars (\$119,812).

3702.5 (Continued)

		<u>Value</u>
Decedent's Property:		
Maryland real property	\$545,000	
Tangible personal property located in Maryland	135,000	
Non-business intangible personal property	105,000	
D.C. real property used in business	2,000,000	
Commercial bank accounts located in Maryland related to business	500,000	
Business tangible personal property located in the District	<u>150,000</u>	
Total gross estate		\$3,435,000
Total allowable deductions		735,000
Taxable estate		2,700,000
Gross federal estate tax		1,125,800
Allowable unified credit		192,800
Allowable credit for state death taxes ("federal credit")		155,600

District estate tax computed under the following formula:

			Value of that part of decedent's gross estate subject to tax by the District
Federal credit	X		
			<hr/>
			The value of the decedent's gross estate
\$155,600	X		<u>\$2,650,000</u>
			\$3,435,000
District estate tax			\$120,041

SOURCE: Final Rulemaking published at 35 DCR 2353, 2354 (April 1, 1988).

3703 DETERMINATION OF TAXABLE SITUS

- 3703.1 The taxable situs of real property shall be the place where the real property is situated.
- 3703.2 Real property having an actual situs outside the District shall not be taxable with respect to a resident decedent where the property is held in a personal trust.
- 3703.3 Real property having an actual situs in the District shall be taxable with respect to a nonresident decedent, including property held in a personal trust.
- 3703.4 All other indirect interests in real estate (e.g., partnership, corporate) shall for District estate tax purposes be regarded as intangible personal property.
- 3703.5 A contract to convey land shall constitute an equitable conversion so that the seller's interest is personal property and the buyer's interest is real property.

- 3703.6 The taxable situs of tangible personal property shall be the place where the property is customarily located at the time of the decedent's death.
- 3703.7 The taxable situs of tangible personal property which, by its nature, is readily movable shall be determined by the Deputy Chief Financial Officer from the facts of each case.
- 3703.8 If readily movable tangible personal property belonging to a decedent domiciled within the District is accidentally or casually outside of the District at the time of the decedent's death, the taxable situs of that property shall be the District.
- 3703.9 The taxable situs of intangible personal property other than business use intangible personal property shall be the domicile of the decedent at the time of the decedent's death.
- 3703.10 The taxable situs of business use intangible personal property as defined in §3799.2 shall be in the District, regardless of the resident of the decedent.

SOURCE: Final Rulemaking published at 35 DCR 2353, 2358 (April 1, 1988).

3704 APPORTIONMENT

- 3704.1 The values used in determining the tax shall be used for purposes of making the apportionment required by §15 of the Act.
- 3704.2 Any exemption or reduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift shall inure to the benefit of the person bearing that relationship or receiving the gift.
- 3704.3 The following credits shall inure to the proportionate benefit of all persons liable to apportionment:
- (a) Any unified credit;
 - (b) Any credit for property previously taxed;
 - (c) Any credit for state death taxes; and
 - (d) Any credit for gift taxes or death taxes of a foreign country.
- 3704.4 To the extent that a gift or bequest does not qualify for a full marital or charitable deduction for purposes of the federal estate tax solely by reason of an inheritance or estate tax or other death tax imposed upon and deductible from the gifted or bequeathed property, the property shall not be included in the computation provided for the D.C. Code §47-3714, and to that extent no apportionment shall be made against the property. This exception shall not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under §2053(d) of the Internal Revenue Code of 1986, relating to the deduction for state death taxes on transfers for public, charitable or religious uses.

- 3704.5 In all cases in which any property required to be included in the gross estate does not come into the possession of the fiduciary or other person required to pay the District estate tax or the federal estate tax, he or she shall be entitled, and it shall be his or her duty, to recover from whomsoever is in possession, or from the persons interested in the estate, the proportionate amount of the taxes owed under the provisions of the Act.
- 3704.6 If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the persons interested in the estate who are subject to apportionment.
- 3704.7 If the fiduciary or other person required to pay the tax transfers any property included in the estate to another person, other than a *bona fide* purchaser for value, the transferee shall be jointly and severally liable with the transferor for the amount of tax apportioned to the transferor under this section, less the value at the time of the transfer of any consideration furnished by the transferee for the property.
- 3704.8 None of the provisions of the Act shall in any way impair the right or power of any person by will or by written instrument executed *inter vivos* to make direction for the payment of taxes and to designate the fund or funds or property out of which the payment shall be made; and in every such case the provisions of the will or of such written instrument executed *inter vivos* shall be given effect to the same extent as if the Act had not been enacted.

SOURCE: Final Rulemaking published at 35 DCR 2353, 2358 (April 1, 1988).

3705 FILING RETURNS AND PAYMENT OF TAX

- 3705.1 A personal representative who has obtained an extension of time for filing the federal estate tax return shall promptly file with the Deputy Chief Financial Officer a copy of the document granting the extension.
- 3705.2 Upon good cause shown prior to the expiration of any approved extended period, the Deputy Chief Financial Officer may further extend the time for filing a District estate tax return.
- 3705.3 Where the personal representative claims credit or a deduction for state death taxes for taxes paid to another state and allowed as a credit against the federal estate tax, he or she shall file with the District estate tax return a computation of the tax and proof of payment. The Deputy Chief Financial Officer shall accept a receipt issued by the other state's tax authority as proof of payment, and in his or her discretion, may accept other proof.
- 3705.4 Upon good cause shown, the Deputy Chief Financial Officer may extend the time for paying the District estate tax.
- 3705.5 The period of time for making an assessment pursuant to §8 of the Act shall not be limited if a return due under the provisions of the Act is not filed by the personal representative.

- 3705.6 Within thirty (30) days of receiving an Internal Revenue Service audit report showing adjustments to the federal estate tax return, the personal representative shall file with the Deputy Chief Financial Officer an amended District estate tax return and a copy of the Internal Revenue Service audit report.
- 3705.7 If additional District estate tax is due as a result of the amendment or adjustments to the federal and District estate tax returns, the personal representative shall pay the additional tax and interest calculated in accordance with D.C. Code §47-453, for the period from ten (10) months after the decedent's death until the amended return is filed. The tax and interest shall be paid at the time of filing the amended District estate tax return.
- 3705.8 If the Deputy Chief Financial Officer determines a deficiency in tax, he or she shall send to the person liable for the payment of the deficiency at his or her most recent address by certified mail, notice of the determination.
- 3705.9 Upon good cause shown, the Deputy Chief Financial Officer may grant an extension of time for making protest provided for in D.C. Code §47-3717 .
- 3705.10 In the event the District estate tax is overpaid, a refund may be requested by filing a claim or an amended District estate tax return within three (3) years after the date the tax was paid. Upon a determination by the Deputy Chief Financial Officer that the tax has been overpaid, the Deputy Chief Financial Officer shall refund the amount of overpayment.

SOURCE: Final Rulemaking published at 35 DCR 2353, 2359 (April 1, 1988).

3706 FAILURE TO FILE OR PAY TIMELY, OR FILING OF FALSE RETURN

- 3706.1 Each application for an extension of time shall be in writing and shall clearly state the reasons for the request.
- 3706.2 If an extension of time to file the estate tax return has not been obtained or, in the case of an extension, if the return or an additional extension is not filed within the extended time period, the penalty for late filing shall be assessed.
- 3706.3 If an extension of time to pay the estate tax has not been obtained or, in the case of an extension, if the payment is not made or an additional extension is not filed within the extended time period, the penalty for late payment shall be assessed.
- 3706.4 Any outstanding tax due remaining after the expiration of the due date for payment or of an extension of time to pay shall be deemed delinquent and shall be subject to penalty and interest under the provisions of D.C. Code §47-453.

SOURCE: Final Rulemaking published at 35 DCR 2353, 2360 (April 1, 1988).

3707 LIEN AND CERTIFICATES

- 3707.1 The lien imposed by the Act on the decedent's property shall not be valid as against any purchaser, mortgagee, pledgee or other holder of a security interest for a full and adequate consideration in money or money's worth. Property, consideration or proceeds received as a result of any sale, mortgage, pledge or granting of a security interest shall remain subject to the lien imposed by D.C. Code §47-3711.
- 3707.2 The Deputy Chief Financial Officer shall issue no releases of lien.
- 3707.3 Except as provided in §3707.5, if the Deputy Chief Financial Officer is satisfied that no liability for tax, penalty or interest exists, or that all tax, penalty and interest liabilities have been fully discharged or provided for, the Deputy Chief Financial Officer shall, upon request by the personal representative, issue a certificate in accordance with §11 of the Act.
- 3707.4 Issuance of a certificate shall discharge the personal representative from personal liability for the tax, penalty and interest imposed under the Act.
- 3707.5 The Deputy Chief Financial Officer shall not provide a certificate when no District estate tax return is required to be filed.

SOURCE: Final Rulemaking published at 35 DCR 2353, 2361 (April 1, 1988).

3799 DEFINITIONS

- 3799.1 Words and phrases defined in §2 of the Act shall have the same meaning when used in this chapter. In addition, the following words and phrases shall have the meaning ascribed:

Business use intangible personal property - is intangible personal property used by the decedent in a trade or business in the District. It includes, by way of illustration and not by way of limitation, notes, accounts receivable, bank accounts, patents and other choses in action. Ownership of an interest in a corporation or partnership in the District does not in itself establish the use of intangible personal property in a trade or business in the District.

Deputy Chief Financial Officer - the Deputy Chief Financial Officer of the Office of Tax and Revenue, or his or her designee, agent or representative.

District estate tax - the tax imposed by the Act.

Intangible personal property - includes by way of illustration and not by way of limitation, stocks, bonds, notes (whether secured or unsecured), bank deposits, accounts receivable, trademarks, copyrights, patents, good will, partnership interests, life insurance policies and other choses in action.

Person - includes a natural person, corporation, association, partnership, joint venture, joint stock company, syndicate, estate or trust, or any other entity under which business or other activities may be conducted, and any government, political subdivision, governmental agency, or local governmental agency.

Person interested in the estate - any person including a personal representative, guardian, or trust entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent, any property or interest therein, or any benefit whatsoever with respect to any such property or interest, included in the decedent's gross estate, whether under a will or intestacy or by reason of any transfer, trust, estate, interest, right, power or relinquishment of power.

Resident - is synonymous with the word "domiciliary" and the word "residence" is synonymous with the word "domicile."

Tangible personal property - includes, by way of illustration and not by way of limitation, cash, goods, wares, merchandise, vehicles, and all other things corporeal.

SOURCE: Final Rulemaking published at 35 DCR 2353, 2361 (April 1, 1988).